IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2263 OF 1997

Smt.Nalini Vasant Kenjale & Ors. ..Petitioners.

V/s.

M/s.Nandini Dairies Pvt. Ltd. & Ors. ..Respondents.

Mr.S.G.Surana for petitioners.

None for respondents.

CORAM : R.V.MORE, J.

DATED : 19TH JUNE, 2007.

P.C. :-

. Heard Mr.Surana for the petitioners. None appears for the respondents though served.

2. The petitioners in the aforesaid Writ Petition are the original defendant Nos.7 to 10 in Regular Civil Suit No.186/96. The aforesaid Regular Civil Suit No.186/96 came to be filed by respondent No.1 for permanent injunction restraining the defendants therein from obstructing his possession to the suit property, permanent injunction was also prayed restraining the defendants from developing the suit property.

3. The respondent No.1 / original plaintiff

filed an application at Exhibit 5 in the said suit for temporary injunction. The trial Court by its order dated 13/2/1996 initially was pleased to pass order of status quo. The application at Exhibit 5 was subsequently disposed of by the trial Court by its order dated 23rd April, 1996. The trial Court after hearing both the sides rejected the application at Exhibit 5.

4. The first respondent / original plaintiff being aggrieved preferred Misc. Civil Appeal No. 230/96. A statement was made by Mr.Surana, learned counsel for the petitioners that during the pendency of this appeal, no interim order was operating. The Misc. Civil Appeal was heard and disposed of on 6th March, 1997 and ultimately the petitioners were restrained from carrying out any construction work of the ownership flats, etc. in the suit property till the decision of Regular Civil Suit No.186/96. The Appeal Court also directed the trial Court to decide the suit as expeditiously as possible and in any case before the end of December, 1997.

5. The petitioners / original defendant Nos.7 to 10 preferred this Writ Petition and it was placed for admission before this Hon’ble Court on 4th August,

1997. After hearing both the sides, the learned Single Judge of this Court admitted the Writ Petition by passing the following order:-

> " Rule.
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> In so far as the interim relief is concerned, the Respondent No.1 claims that the land was taken on lease for the purpose of grazing cattle. The last rent receipt is of the year 1960. There ere also some entries in the revenue record in favour of the Respondents. On application by the Petitioner, these entries have been deleted. The building construction commenced in the year 1993-1994 and the suit has been filed in February, 1996. There was no injunction operating against the Petitioner from the filing of the Suit till the Judgment in Appeal. Considering the above, Appellate Court was wrong in reversing the order based on the Judgment of the Apex Court in the case of Gangubai Bablya Chaudhari & Ors. V/s. Sitaram Bhalchandra Sukhtankar & Ors. (reported in AIR 1983 SC 742). In that case the Apex Court has posed a question that it is admitted that a person was admittedly in possession than other side who claims to be in possession has to show as to how such a person was dispossessed. Last rent receipt is of the year 1960. The entries in the revenue record have been corrected. The only evidence is in respect of Survey number identified under Survey No.562 wherein it is alleged that part of the land was acquired and compensation has been paid to Respondent No.1. In these circumstances, this is a fit and proper case where the order of the Appellate Court should be stayed except that there will be no stay in respect of Survey No.562.
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> Hence interim relief in terms of prayer (c) of the Writ Petition, except in respect of S.No.562.

6. The High Court stayed the implementation and

operation of the order passed by the lower Appellate Court except Survey No.562.

7. Mr.Surana, learned counsel or the petitioners made a statement that respondent No.1 had filed a Civil Application No.2168 of 1997 for review of the above order dated 4th August, 1997. The said application was also rejected on 22nd December, 1997. The interim order which was passed on 4th August, 1997 is in force till today. Mr.Surana further made a statement that in view of the interim order, the petitioners and the respondent Nos.2 to 13 have developed the suit property, except the suit property No.562 and the flats were already sold to third parties. So far as the suit property Survey No.562 is concerned, in view of the interim order construction is not carried out and status quo is maintained. Though the lower Appellate Court directed the trial Court to dispose of the suit by the end of December, 1999 this order was stayed by this Court and, therefore, the suit is still pending.

8. In the facts and circumstances mentioned above, I am of the opinion that the petition can be disposed of by directing the learned trial Judge to dispose of the suit expeditiously and during the

pendency of the suit, interim order passed by this Court on 4th August, 1997 in the said Writ Petition to operate. Hence I pass the following order.

i. The learned trial Judge namely Civil Judge, J.D., Pune is directed to hear and dispose of Regular Civil Suit No.186/96 as expeditiously as possible and in any case within a period of one year from the date of receipt of this order.

ii. The trial Court shall decide the suit independently, on its own merits and without being influenced by the impugned or interim order in the petition.

iii. Interim order passed by this Court on 4th August, 1997 in the aforesaid Writ Petition to remain in operation till the disposal of the suit.

iv. Petition is disposed of.

v. No order as to costs.

(R.V.MORE, J.)